

## **SUGGESTED PRACTICES REGARDING DISCOVERY IN COMPLEX CASES**

Based on meetings with representatives from the Court, the United States Attorney's Office, and the CJA Committee for the Northern District of California, the following is a protocol of suggested practices regarding discovery in wiretap and other complex, document-intensive cases. This document is not intended to expand the parties' discovery obligations under Federal Rule of Criminal Procedure 16, the Jencks Act, or other federal statutes or rules. Paragraphs 1 through 8 of the suggested practices correspond to paragraphs 1 through 8 of the "Second Agreement Regarding Discovery in Complex Cases."

### **1. Pertinent Call Tapes:**

- a. The parties are encouraged to use digital media for audio files because digital files may be easier to review and less expensive to reproduce for a multi-defendant case.
- b. Generally, it is preferable that the naming conventions for the audio files, the monitoring logs, and the transcripts be consistent so that it is easy to cross-reference the audio calls with the corresponding monitoring logs and transcripts. If at the outset of a case, a naming convention has not yet been established, the prosecution and defense should meet and confer regarding a naming convention before the files are produced.

### **2. Pleading Documents:**

Pleading documents should be Bates-stamped in chronological order using the Bates sequence used for disclosure of other discovery in the case. The parties are encouraged to consider printing all Title III pleadings (including affidavits) into Adobe .pdf format and disclosing the .pdf format simultaneously with the hard copies.

### **3. Non-Pertinent Calls:**

- a. As with pertinent calls, the parties are encouraged to use digital media for audio files because digital files may be easier to review and less expensive to reproduce for a multi-defendant case.
- b. As with pertinent calls, generally it is preferable that the naming conventions of audio files, monitoring logs, and transcripts be consistent. If at the outset of a case, a naming convention has not established, the parties should meet and refer regarding a naming convention.

4. **Investigative Reports:**

- a. The parties should meet and confer at the outset of a case as to whether both parties want to convert investigative reports into an electronic .pdf format with an OCR (optical character recognition) overlay.
- b. If both parties want the investigative reports in electronic format, then the parties should meet and confer about whether they can divide the costs for this process between the parties.

5. **Pen Register Data:**

The United States Attorney's Office will ask the investigative agencies to ask the telephone companies to provide pen register data in electronic format so that it can be disclosed in this format.

6. **Monitoring Logs:**

- a. In wiretap cases, the AUSA will ask federal agencies to use an electronic format for monitoring logs and monitoring data.
- b. The AUSA is encouraged to disclose the data in ASCII tab or comma-delimited format. To the extent that fields or information are excluded from this digital information, the AUSA will notify the defense that data was omitted.

7. **Translations and Transcriptions:**

- a. If possible, the parties should provide electronic version of transcripts or translations in Wordperfect or Rich Text Format (RTF), and also in ASCII format.
- b. As discussed above, generally it is preferable that the naming conventions for the audio files, the monitoring logs, and the transcripts be consistent so that it is easy to cross-reference the audio calls with the corresponding monitoring logs and transcripts. If at the outset of a case, a naming convention has not yet been established, the prosecution and defense should meet and confer regarding a naming convention for the translations and transcripts that corresponds to the titles of audio and monitoring files.

8. **Consensual and Surveillance Tapes and Videos:**

The parties are encouraged to use digital media for tapes and videos because digital files may be easier to review and less expensive to reproduce for a multi-defendant case.

9. **Indices:**

On a case-by-case basis, the parties are encouraged to discuss the joint production of indices that will be mutually beneficial to both parties, and will result in cost-savings to both parties.

10. **Disclosure of Hard Copies of Discovery:**

- a. In situations where discovery is available initially only as a hard copy (as opposed to electronically), the parties should provide a complete Bates-numbered hard copy set to the discovery coordinator or to the discovery/copying vendor.
- b. As with the production of investigative reports, and in situations where discovery is available initially only as a hard copy, the parties should meet and confer as to whether both parties want to convert the discovery to an electronic .pdf format with an OCR (optical character recognition) overlay.
- c. If both parties want the discovery in electronic format, then the parties should meet and confer at the outset of the case about whether they can divide the costs for this process between the parties.
- d. A recommended procedure for the conversion is as follows. The hard copy of the discovery should be scanned into a high-quality .pdf format (using Adobe .pdf software) with an optical character recognition (OCR) overlay. The vendor should be asked to simultaneously produce a set of .tif (image) files. (This can usually be done at no additional cost.)

11. **Computer/Digital Discovery:**

Discovery in computer cases will be dealt with on a case-by-case basis. The parties should meet and confer at the outset of the case about what should be provided in discovery. The defense will be responsible for purchasing and providing a blank hard drive or blank medium upon which a copy can be made of the computer media that will be disclosed.

12. **Complex Case Discovery Orders:**

Copies of stipulated discovery orders in complex cases will be provided to the Northern District CJA Supervising Attorney. The parties are encouraged to review these orders at the outset of new complex cases in order to expedite arriving at new agreements and to expedite the disclosure of discovery.